

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Eddy Jean E. Freyne et al.

Application No.: 10/596,512

Confirmation No.: 7466

Filed: June 15, 2006

Art Unit: 1624

For: PYRIDO-AND PYRIMIDOPYRIMIDINE
DERIVATIVES AS ANTI-PROLIFERATIVE
AGENTS

Examiner: N. E. Jarrell

**APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR
RECONSIDERATION UNDER 37 CFR §1.705(b)**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This is a request for reconsideration of the patent term adjustment of 222 days indicated in the determination of Patent Term Adjustment under 35 USC 154(b) that was attached to the Notice of Allowance mailed on December 14, 2009 for the above-referenced application. It is respectfully requested that Applicants be granted a minimum patent term adjustment of **531 days**, with an adjustment term based on the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application.
2. This request is being submitted along with the payment of the issue fee.
3. Applicants submit herewith a "Statement Under 37 CFR§ 1.702(b)."

Patent Term Adjustment Request dated March 12, 2010

4. In accordance with 37 CFR§ 1.705(b)(1), please charge our Credit Card in the amount of \$200.00 covering the fees set forth in 37 CFR §1.18(e). The U.S. Patent and Trademark Office is authorized to charge any additional fees that may be required in conjunction with this submission to Deposit Account Number 50-2228, under Order No. 026038.0282PTUS, from which the undersigned is authorized to draw.

Dated: March 12, 2010

Respectfully submitted,

By 

B. Dell Chism

Registration No.: 60,464

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STATEMENT UNDER 37 CFR § 1.702(b)

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This statement is respectfully submitted in support of the "Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR § 1.705(b)" for the above-referenced application. In view of the following, it is respectfully requested that Applicants be granted a minimum patent term adjustment of 531 days, with an adjustment term to be based on the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application.

2. The patent term adjustment on the Determination of Patent Term Adjustment Under 35 U.S.C. §154(b) that was attached to the Notice of Allowance is 222 days (a copy of the PTAS Sheet is submitted herewith as Exhibit A). This determination of 222 days is in error in that

Statement Under 37 CFR § 1.702(b)(2) dated March 12, 2010

pursuant to 35 U.S.C. §154(b) the Office failed to properly account for the days lost to Patent Office Delays under 37 CFR § 1.702(a)(1), § 1.703(a)(1), § 1.702(a)(2), and § 1.703(a)(2),(3) in conjunction with the Patent Office's delays in issuing a patent within three (3) years of filing the above-referenced application under 37 CFR § 1.702(b) and 1.703(b), as provided in *Wyeth v. Kappos*, ___ F.3d ___ (Fed. Cir. 2010).

3. Pursuant to 37 CFR § 1.702, the correct patent term adjustment should be 531 days providing for a June 22, 2010 issuance date. The correct patent term adjustment of 531 days accounts for the delay times for: i) failure to issue a patent within three (3) years of the filing date of June 15, 2006, which totals a delay of 372 days based on a June 22, 2010 issuance date; ii) failure to provide a first action within fourteen (14) months of the 35 USC 371 completion date of June 18, 2006, wherein the first action was not received until February 25, 2008, which totals a delay of 191 days based on the fulfillment of the requirements of 35 USC § 371; and iii) failure to provide a timely response to Applicant's reply filed June 12, 2009, wherein the Patent Office did not respond until December 14, 2009, which totals a delay of 63 days. The correct patent term adjustment of 531 accounts for Applicant delays under 37 CFR § 1.704(b), wherein Applicants were debited a total of 32 days for failing to respond to the August 20, 2008 office action until December 22, 2008. The correct patent term adjustment accounts for a total of 63 days of overlap regarding the differences between patent term extension periods under 37 CFR § 1.702(b), 1.703(b) and all other section of Code regarding Patent Office Delays, which is set forth under 37 CFR § 1.703(f) regarding calculation of correct patent term adjustments.

4. The above-referenced application is not subject to any terminal disclaimers.

5. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 CFR § 1.704 beyond that discussed *supra*, regarding Applicants 32 days of delay for failing to respond to the August 20, 2008 office action until December 22, 2008.

6. As set forth in 37 CFR §1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of examination delays reduced by the period of Applicant Delay and examination delay overlap days. Therefore, Applicants submit that the correct patent term adjustment for the above-referenced application is **at least 531 days**, which is the difference between the total period of examination delay (626 days) and the period of Applicant Delay (32 days) and the period of examination delay overlap days (63 days). Applicants further submit that the term of 531 days should be adjusted by a term equal to the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application in accordance with 37 CFR §1.703(b). **As such, the correct patent term adjustment upon issuance of a patent is expected to be the sum of 531 days (as calculated herein) and adjusted for the number of days from March 15, 2010 to issuance of a patent.**

7. In accordance with 37 CFR§ 1.705(b)(2)(iii), Applicants submit that the pending patent corresponding to this application will not be subject to a terminal disclaimer.

In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a minimum patent term adjustment of 531 days, with an adjustment to be based on the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application.

Dated: March 12, 2010

Respectfully submitted,

By 

B. Dell Chism

Registration No.: 60,464

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(703) 744-8063

(703) 744-8001 (Fax)

Attorney for Applicant

ATTACHMENTS:

- (a) Determination of Patent Term Adjustment under 35 U.S.C. §154(b)

10/596,512	PYRIDO-AND PYRIMIDOPYRIMIDINE DERIVATIVES AS ANTI-PROLIFERATIVE AGENTS	03-11-2010::09:23:30
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/596,512

Filing or 371(c) Date:	06-15-2006	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	222
USPTO Adjustment(days):	-	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
12-14-2009	Mail Notice of Allowance	63	
12-07-2009	Document Verification	⬆	
12-07-2009	Notice of Allowance Data Verification Completed	⬆	
12-07-2009	Case Docketed to Examiner in GAU	⬆	
12-07-2009	Examiner's Amendment Communication	⬆	
11-20-2009	Examiner Interview Summary Record (PTOL - 413)	⬆	
11-09-2009	Date Forwarded to Examiner	⬆	
06-12-2009	Response to Election / Restriction Filed	⬆	
06-12-2009	Request for Extension of Time - Granted		
04-03-2009	Mail Restriction Requirement		
03-30-2009	Requirement for Restriction / Election		
01-16-2009	Date Forwarded to Examiner		
12-22-2008	Response to Election / Restriction Filed		32
12-22-2008	Request for Extension of Time - Granted		⬆
08-20-2008	Mail Restriction Requirement		⬆
08-18-2008	Requirement for Restriction / Election		
06-19-2008	Date Forwarded to Examiner		
05-21-2008	Response to Election / Restriction Filed		
05-21-2008	Request for Extension of Time - Granted		
02-25-2008	Mail Restriction Requirement	191	
02-19-2008	Requirement for Restriction / Election	⬆	
11-02-2006	Information Disclosure Statement considered	⬆	
07-21-2007	Case Docketed to Examiner in GAU	⬆	
07-21-2007	IFW TSS Processing by Tech Center Complete	⬆	
11-02-2006	Information Disclosure Statement (IDS) Filed	⬆	
11-02-2006	Information Disclosure Statement (IDS) Filed	⬆	
04-05-2007	PG-Pub Issue Notification	⬆	
06-18-2006	371 Completion Date	⬆	
12-26-2006	Application Return from OIPE		
12-26-2006	Application Return TO OIPE		
06-18-2006	371 Completion Date		
12-26-2006	Application Return from OIPE		
12-26-2006	Application Return TO OIPE		
06-18-2006	371 Completion Date		

12-26-2006 Application Dispatched from OIPE

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